

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VALERIE MARTEL, et al.,

Plaintiff(s),

vs.

DALE L. CAIN, SR.,

Defendant(s).

Case No. 2:14-cv-00636-RCJ-NJK

ORDER ADMONISHING C. CONRAD
CLAUS

ORDER SANCTIONING CARL
JOERGER

On July 18, 2014, the Court ordered Plaintiffs, Defendant and their counsel to show cause in writing, no later than July 25, 2014, why they should not be sanctioned pursuant to Federal Rule of Civil Procedure 16(f). *See* Docket No. 12.¹ Plaintiffs and their attorney (C. Conrad Claus) filed a response. Docket No. 13. Defendant and his attorney (Carl Joerger) failed to respond to the order to show cause. For the reasons discussed more fully below, the Court hereby **ADMONISHES** C. Conrad Claus and hereby **SANCTIONS** Carl Joerger in a Court fine of \$250.

I. STANDARDS

Parties and attorneys are required to follow Court orders. Rule 16(f) requires parties and attorneys to comply with pretrial orders and provides that a judge may order appropriate sanctions, including those outlined in Rule 37(b)(2)(A)(ii)-(vii), for non-compliance. Whether the party and/or its counsel disobeyed the court order intentionally is impertinent; sanctions may be imposed when the

¹ References to “Rules” hereafter refer to the Federal Rules of Civil Procedure.

parties and their counsel disobey a court order. *See Lucas Auto. Eng'g, Inc. v. Bridgestone/Firestone, Inc.*, 275 F.3d 762, 769 (9th Cir. 2001) (sanctions may be imposed when disobedience of order is unintentional). Rule 16(f) “was designed not only to insure the expeditious and sound management of cases for trial, but to deter conduct that unnecessarily consumes ‘the Court’s time and resources that could have been more productively utilized by litigants willing to follow the Court’s procedures.’” *Martin Family Trust v. Heco/Nostalgia Enterps. Co.*, 186 F.R.D. 601, 603 (E.D. Cal. 1999) (quoting *Mulkey v. Meridan Oil, Inc.*, 143 F.R.D. 257, 262 (W.D. Okla. 1992)).

The Court has broad discretion in fashioning the appropriate sanctions. *See, e.g., Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1397 (9th Cir. 1993). The Court may impose any “just” sanctions under Rule 16(f). In determining the appropriate sanction, the Court notes that a primary objective of Rule 16(f) is the deterrence of similar misconduct. *Martin Family Trust*, 186 F.R.D. at 604.²

II. BACKGROUND

On July 14, 2014, the parties submitted a proposed discovery plan. Docket No. 10. On July 15, 2014, the Court denied the proposed discovery plan and ordered that a new discovery plan be submitted no later than July 17, 2014. *See* Docket No. 11. The parties failed to comply with that order. On July 18, 2014, the Court issued the pending order to show cause why the parties and their counsel should not be sanctioned for failing to comply with the July 15, 2014 order. Docket No. 12. Responses to the order to show cause were due no later than July 25, 2014. *See id.* Although Plaintiffs and their counsel timely responded to the order to show cause, Defendant and his counsel did not.

III. ANALYSIS

A. Defendant and Carl Joerger

Defendant and his attorney (Carl Joerger) have violated two clear Court orders. They violated the Court’s July 15, 2014 order to timely file an amended discovery plan and they further violated the order to show cause by failing to timely respond to it. In light of the failure to respond to the order to show cause, it appears that there is no justification for these shortcomings and that sanctions are

² Similarly, the Local Rules make clear that the Court may “impose any and all appropriate sanctions” on attorneys who, without just cause, either fail to appear when required for argument on a motion or otherwise fail to comply with any order of the Court. Local Rule IA 4-1.

warranted. In the Court's view, it appears that Mr. Joerger as Defendant's attorney bears the brunt of the blame for not responding to the Court's orders given that he receives the notice of the Court orders rather than his client. In light of the circumstances, the Court **SANCTIONS** Mr. Joerger in a Court fine of \$250. The sanction is personal to Mr. Joerger. Payment of the \$250 shall be made *within ten days* to the "Clerk, U.S. District Court." Mr. Joerger shall submit proof of payment to the undersigned Judge's chambers within five days of payment.

B. Plaintiffs and C. Conrad Claus

Plaintiffs and their attorney (C. Conrad Claus) did respond to the order to show cause. Although not entirely clear, Mr. Claus argues primarily that he failed to comply with the July 15, 2014 order because he and his staff did not receive notice of its issuance. *See* Docket No. 13.³ The Court takes very seriously representations from attorneys that they did not receive notice of a Court order. The Court tracks the *sending* of the notices through its Notice of Electronic Filing ("NEF"). In this case, the NEF shows that the notice of the July 15, 2014 order was sent from the Court to Mr. Claus to two email address: paralegal@lawiswar.com, conrad@lawiswar.com. In addition, however, the Court also tracks *delivery* of the NEFs to counsel through the Administrative Office's Case E-Mail Notification Tracking System ("CENTS"). In this case, the CENTS records show that the Court's notice was successfully delivered to the server for the above two email addresses.⁴

Together, the NEF and the CENTS records create significant evidence of proper delivery of the Court's notice. In particular, the NEF alone establishes that notice was properly sent and creates a presumption of delivery and receipt. *See American Boat Co. v. Unknown Sunken Barge*, 567 F.3d 348, 352-53 (8th Cir. 2009). This presumption is not overcome based on a simple statement in a declaration that notice was not received. *See, e.g., Trustees of the Operating Eng'rs Pension Trust v. Maui One Excavating, Inc.*, 2013 WL 1908328, *2 (D. Nev. May 7, 2013) (finding such an assertion "plainly

³ While that appears to be Mr. Claus's argument, the Court finds it notable that his declaration actually asserts "[t]hat I *did* receive the July 15, 2014, Order Denying the Discovery Plan and directive to submit an Amended Plan by July 17, 2014." Docket No. 13 at 2 (emphasis added). The Court assumes this was a typographical error in light of the other assertions made.

⁴ The NEF and CENTS records for Mr. Claus and his paralegal are attached to this order.

1 insufficient” to overcome presumption, and citing *Singh v. Arrow Truck Sales, Inc.*, 2006 WL 1867540,
2 *1 (E.D. Cal. July 5, 2006)). That is especially true when the CENTS records further confirm delivery.
3 *Id.*

4 In this case, the Court finds that Mr. Claus has failed to rebut the presumption of delivery created
5 by the NEF and further confirmed by the CENTS record. Mr. Claus has also failed to put forth any other
6 justification for his violation of the July 15, 2014 order. Nonetheless, in the circumstances of this case,
7 the Court finds that a strong **ADMONISHMENT** of Mr. Claus is sufficient sanction to deter future
8 misconduct. The Court reminds Mr. Claus that he bears the responsibility of maintaining his CM/ECF
9 account and reviewing and responding to Court orders. *See, e.g., Cabrera v. New Albertson's, Inc.*, 2013
10 U.S. Dist. Lexis 101497, *4 (D. Nev. July 19, 2013). Mr. Claus should expect future violations of Court
11 orders to result in monetary sanctions.

12 **IV. CONCLUSION**

13 For the reasons discussed more fully above, the Court hereby **ADMONISHES** C. Conrad
14 Claus and hereby **SANCTIONS** Carl Joerger in a Court fine of \$250.

15 IT IS SO ORDERED.

16 DATED: July 28, 2014

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19 _____
20 NANCY J. KOPPE
21 United States Magistrate Judge
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United States District Court

District of Nevada

Notice of Electronic Filing

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Case Name: Martel et al v Cain

Case Number: [2:14-cv-00636-RCJ-NJK](#)

Filer:

Document Number: [11](#)

Docket Text:

ORDER that [10] Proposed Discovery Plan/Scheduling Order is DENIED. Signed by Magistrate Judge Nancy J. Koppe on 7/15/14. (Copies have been distributed pursuant to the NEF - MMM)

2:14-cv-00636-RCJ-NJK Notice has been electronically mailed to:

Carl M Joerger Carlmjoerger@outlook.com

Christian Conrad Claus paralegal@lawiswar.com, conrad@lawiswar.com

2:14-cv-00636-RCJ-NJK Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

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